



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-1138]

RIN 1625-AA09

Drawbridge Operation Regulation; Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule governing the Freeport Drawbridge, mile 46.0, over the Sacramento River. The bridge owner proposed to change the "on demand" bridge opening hours and dates, due to a documented decrease in drawbridge openings compared to other nearby bridges. The change is to address the issue of misalignment between drawbridge staffing and actual drawbridge operation, resulting in unnecessary staffing of the drawbridge during periods of navigational inactivity.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of Docket No. USCG-

2011-1138 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1138 in the "Search" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437-3516, email David.H.Sulouff@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
ANPRM	Advanced Notice of Proposed Rulemaking
§	Section

U.S.C. United States Code

A. Regulatory History and Information

On January 25, 2012, we published an Advance Notice of Proposed Rulemaking (ANPRM), entitled Drawbridge Operation Regulation; Sacramento River, CA in the Federal Register (77 FR 3664). On August 10, 2012, we published a Notice of Proposed Rulemaking (NPRM), entitled Drawbridge Operation Regulation, Sacramento River, CA, in the Federal Register (77 FR 47789). No public meeting was requested, and none was held.

B. Basis and Purpose

The Freeport Drawbridge is a swing span style drawbridge at mile 46.0, over the Sacramento River, owned by the County of Sacramento and maintained by Sacramento and Yolo counties. The drawbridge provides 190 feet horizontal clearance, 29 feet of vertical clearance for vessels above Mean High Water in the closed-to-navigation position and unlimited vertical clearance when open. The Sacramento River is legally navigable for bridge permitting purposes from its confluence with Suisun Bay to mile 245.0 at Red Bluff, CA.

Sacramento and Yolo counties submitted a joint request for a permanent change to the Freeport Drawbridge operating requirements, with support from Congressman Mike Thompson.

The change is to address the misalignment between drawbridge staffing and openings for vessels.

The bridge owner has provided bridge operating statistics showing significantly less drawspan operations during certain months and evening hours in 2009-2010, than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove. The statistical information and a detailed explanation by the bridge owner have been included in the docket (USCG-2011-1138-0003 & 0004) and are available for public review. The bridge owner performed significant outreach to various waterway user organizations including the Pacific Inter-Club Yacht Association, the Recreational Boaters of California, the Capital City Yacht Club, the Sacramento Yacht Club, River View Yacht Club and Hornblower Cruises.

C. Discussion of Comments, Changes and the Final Rule

Sacramento and Yolo counties submitted a joint request for a change to the Freeport Drawbridge operating requirements. Under the existing operating regulations, Freeport Drawbridge opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. The Counties proposed to change

the ``on demand`` bridge opening hours to May 1 through September 30, from 9 a.m. to 5 p.m. At all other times (including November 1 through April 30), the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. This will allow the bridge owner to remove the bridge operator from the drawbridge until needed for scheduled bridge openings, providing a possible monetary savings to the Counties due to reduced bridge operating personnel costs. There is no alternative route for vessels navigating on this reach of the waterway. Vessels that can be safely navigated through the drawbridge while it is in the closed to navigation position may continue to do so at any time.

Submissions 0001-0009 in the electronic docket were posted by the Coast Guard. The single public comment (USCG-2011-1138-0010) referred to the advance notice period as "closure", recommended an October 15 start date due to Fleet Week, observed the statistical period was during the economic downturn and associated decline in vessel transits, and recommended a wider dissemination to all California boat owners. The "advance notice" period is not a closure but a period when vessel operators call the bridge owner in advance to schedule a bridge opening upon their arrival at the

bridge. The statistics provided included the October Fleet Week transits and support the proposed change to the regulation. The economy may influence the number of vessel transits and upon economic recovery and associated increase in navigation, proposals to readjust the operating regulation may be submitted by anyone in compliance with 33 CFR 117.8. The ANPRM and NPRM were disseminated via publication in the Federal Register and also the Coast Guard Local Notice to Mariners between January 4, 2012, and September 24, 2012. The bridge owner held numerous meetings with leading vessel owner organizations prior to submitting their proposal to the Coast Guard. The required methods and extent of outreach to the public was met or exceeded. We encourage the public to read the Federal Register and Coast Guard Local Notice to Mariners to be informed of proposed actions.

D. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563,

Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Bridge operating statistics provided by the bridge owner during 2009-2010, show significantly fewer drawspan operations than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove due to greater vertical clearance provided by the Freeport drawbridge.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will adjust an existing advance notice requirement for bridge openings to more closely conform to the existing needs of navigation, while allowing the bridge owner to reduce bridge operation costs, as documented by the statistics provided by the bridge owner. Vessels that can safely transit under the bridge while in the closed to navigation position, may continue to do so at any time.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

E. List of Subjects in 33 CFR Part 117
Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.189 to read as follows:
§ 117.189 Sacramento River.

(a) The draws of each bridge from Isleton to the American River junction except for the Sacramento County

highway bridge across the Sacramento River, mile 46.0 at Freeport, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(b) The draw of the Sacramento County highway bridge, mile 46.0 at Freeport, shall open on signal from May 1 through September 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is give to the drawtender at the Rio Vista Bridge across the Sacramento River, mile 12.8.

(c) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, and mile 135.5 at Meridian, shall open on signal if at least 12 hours notice is given to the California Department of Transportation at Marysville.

(d) The draws of the bridges above Meridian need not be opened for the passage of vessels.

Dated: November 20, 2012

Karl L. Schultz

Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

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